IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1474 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARANDAS SHAMJI & CO.

Versus

DEPUTY COMMISSIONER OF INCOME TAX (ASSESSMENT)

Appearance:
MR JP SHAH for Petitioner
MR MR BHATT for Respondent

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 11/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

#. The petitioner, a partnership firm has challenged by way of this petition the notices issued under Section 148 of the Income-tax Act, 1961 (hereinafter to be referred to as "the Act") for assessment years 1977-78 to 1981-82 issued by the respondent.

#. The petitioner was assessed under Section 143(3) of the Act for all the 5 assessment years under consideration. It appears that there are other firms functioning in the name and style of Narandas Shamji & Company No. 1, Narandas Shamji & Company No. 2 and Narandas Shamji & Company No. 4. It appears that all the aforesaid firms were separately and independently of the assessee assessed by the department. That these various firms are constituted by the different partners, though some partners may be common, they have specialized in different type of work, they have different bank accounts, have been registered with the Registrar of Firms, they operate with their independent capital brought in by their respective partners, they have different staff and machinery and plant for carrying on their own respective businesses.

#. For assessment year 1982-83, the Assessing Officer in the case of the petitioner - firm held that the other firms were branches or departments of the petitioner-firm and hence, the total turnover of all the firms was treated as turnover of the petitioner-firm and consolidated estimated net profit was assessed in the hands of the petitioner-firm. The petitioner carried the matter in appeal before the Commissioner of Income-tax (Appeals), but the appeal was dismissed requiring the petitioner to prefer Second Appeal before the Income-tax Appellate Tribunal. The Tribunal, for the reasons stated in its orders dated 16.7.86 and 21.11.86 held that the petitioner-firm was independent entity and it was not possible to club the income of the other firms in the hands of the petitioner-firm as well as the petitioner-firm was entitled to registration. The Tribunal rejected the Reference Application filed by the Revenue under Section 256(1) of the Act. The application of the Revenue under Section 256(2) of the Act also failed before this Court.

#. Thereafter it seems that the respondent issued the impugned notices under Section 148 of the Act. The reasons recorded by the respondent for all the 5 assessment years are identical in terms and 9 factors have been stated for the reasons recorded which prompted the Assessing Officer to issue the impugned notices. It is an undisputed fact and common ground between the

parties that all those factors which have been stated in the reasons recorded were taken into consideration by the Tribunal while deciding the appeal for assessment year 1982-83. At the time of hearing, the learned advocate Mr. M.R. Bhatt, in support of the proposed action under Section 147 (a) of the Act referred to the order of the Tribunal and stated that the Tribunal had indicated in its order that in case the department could process the case properly, it may be open to the department to contend that the principles laid down by the Supreme Court in the case of McDowell & Company Ltd. v. Commercial Tax Officer, 154 ITR 148 could be applied. It was, therefore, urged that on the basis of these observations of the Tribunal, the respondent had issued the impugned notices under Section 147(a) of the Act.

#. It is necessary to note that the impugned notices have been issued in 1986 and 1987 when the old provisions were on statute book. It is an admitted position that all the impugned notices have been issued under Section 147(a) of the Act and the said provision, as it then stood, reads as under.

"If--

(a) the Assessing Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under section 139 for any assessment year to the Assessing Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) xxx xxx xxx xxx xxx

he may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in sections 148 to 153 referred to as the relevant assessment year)."

Therefore, the section requires that the Assessing Officer must have a reason to believe that there has been omission or failure on the part of the assessee to file a return or to disclose fully and truly all material facts necessary for assessment and in consequence of such omission or failure, the income chargeable to tax has escaped the assessment for the said assessment year. The Assessing Officer is required to record the reasons

showing what is the basis for holding the reason to believe about such escapement. From the reasons recorded that have been placed on record, it is apparent that the respondent has not been able to point out any material fact relevant for the assessment which has been omitted by the assessee to be disclosed and by virtue of which, there has been escapement of income. To the contrary, the facts on record go to show that not only the assessee had fully and truly disclosed all material facts necessary for the purposes of assessment, but even in relation to the other firms, whose income is sought to be clubbed with that of the petitioner-firm, the respective incomes had been duly shown in the returns filed by those firms and independently assessed by the respective Assessing Officers at the relevant point of time. Not only that, but those firms have been treated as genuine independent entities and registration granted to them. There is nothing on the record to show that these assessments or registration orders have been disturbed in any manner by the Revenue. In light of this fact situation, it is not possible to sustain the action initiated by the respondent by issuance of the impugned notices under Section 148 of the Act. The onus which is on the department to show that there was any omission or failure on the part of the assessee by way of non-disclosure of material facts relevant for the assessment for the years under consideration, remains undischarged.

#. The impugned notices issued under Section 148 of the Act for the assessment years 1977-78 to 1981-82 (Exh. G collectively) are hereby quashed and set aside. The petition is allowed accordingly. Rule is made absolute. There shall be no order as to costs.

[B.C. PATEL, J.] [D.A. MEHTA, J.]

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